

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

Midas Green Technologies, LLC,

Plaintiff,

- vs. -

Rhodium Enterprises, Inc.;
Rhodium Technologies LLC;
Rhodium 10mw LLC;
Rhodium 2.0 LLC;
Rhodium 30mw LLC;
Rhodium Encore LLC;
Rhodium Industries LLC;
Rhodium JV LLC;
Rhodium Renewables LLC;
Rhodium Shared Services LLC;
Rhodium Shared Services PR Inc.;
Chase Blackmon;
Cameron Blackmon; and
Nathan Nichols,

Defendants.

Civil Action No. 6:22-cv-00050-ADA

Jury Trial Demanded

JOINT MOTION FOR ENTRY OF AGREED SCHEDULING ORDER

Pursuant to the Court's Standing Order Governing Proceedings (OGP) 4.1—Patent Cases (Dkt. 43), Plaintiff Midas Green Technologies, LLC and Defendants Rhodium Enterprises, Inc.; Rhodium Technologies LLC; Rhodium 10mw LLC; Rhodium 2.0 LLC; Rhodium 30mw LLC; Rhodium Encore LLC; Rhodium Industries LLC; Rhodium JV LLC; Rhodium Renewables LLC; Rhodium Shared Services LLC; Rhodium Shared Services PR Inc.; Chase Blackmon; Cameron Blackmon; and Nathan Nichols (*i.e.*, all Defendants) hereby provide their agreed proposed case schedule and respectfully request that the Court enter it:

Deadline	Item
April 11, 2022	Plaintiff serves preliminary ¹ infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (<i>i.e.</i> the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit. ²
April 18, 2022	CMC deemed to have occurred.
May 2, 2022	The Parties shall file a motion to enter an agreed Scheduling Order. If the parties cannot agree, the parties shall submit a separate Joint Motion for entry of Scheduling Order briefly setting forth their respective positions on items where they cannot agree. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.
May 9, 2022	Deadline to file a motion for inter-district (or intra-district) ³ transfer. After this deadline, movants must seek leave of Court and show good cause for the delay.
June 17, 2022	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, and (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s).

¹ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

² With respect to the identification of the earliest priority date (*i.e.*, the earliest date of invention) Plaintiff shall follow the Court's statements in *Sratosaudio Inc. v. Hyundai Motor Am.*, Case No. 6:20-CV-1125-ADA, Dkt. 38 at 33-34 (W.D. Tex. June 26, 2021) ("So right now you have the dates that are the preliminary dates. If the plaintiff wants to move back or front, however you want to say it, if they want to make an earlier priority date, they may be able to do so, but they'll have to get my permission, and if we do that, then it's going to -- we're going to modify other rights that you [the defendant] have."), such that if Plaintiff wishes to assert a priority date earlier than March 14, 2012, it must seek leave of Court.

³ The Court's Exemplary Schedule (OGP 4.1) provides a deadline for the filing of inter-district transfer motions, but does not appear to address intra-district transfer motions. The Court's Scheduling Date Calculator Tool – v. 4.1, however, provides a deadline applicable to all transfer motions.

Deadline	Item
June 24, 2022	Parties exchange claim terms for construction.
July 7, 2022	Parties exchange proposed claim constructions.
July 13, 2022	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall identify the scope of the topics for the witness's expected testimony. ⁴ With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
July 19, 2022	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
July 25, 2022	Defendant files Opening claim construction brief, including any arguments that any claim terms are indefinite.
Aug. 15, 2022	Plaintiff files Responsive claim construction brief.
Aug. 29, 2022	Defendant files Reply claim construction brief.
Aug. 29, 2022	Parties to jointly email the law clerks (<i>see</i> OGP at 1) to confirm their <i>Markman</i> date and to notify if any venue or jurisdictional motions remain unripe for resolution.
Sept. 12, 2022	Plaintiff files a Sur-Reply claim construction brief.
Sept. 15, 2022	Parties submit Joint Claim Construction Statement and email the law clerks an editable copy. <i>See</i> General Issues Note #7 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
Sept. 19, 2022	Parties submit optional technical tutorials to the Court and technical advisor (if appointed).
Sept. 26, 2022 (Tentative)	<i>Markman</i> Hearing at 9:00 a.m. This date is a placeholder and the Court may adjust this date as the <i>Markman</i> hearing approaches.

⁴ Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

Deadline	Item
Sept. 27, 2022	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
Nov. 7, 2022	Deadline to add parties.
Nov. 21, 2022	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to infringement or invalidity contentions. This deadline does not relieve the parties of their obligation to seasonably amend if new information is identified after initial contentions.
Jan. 17, 2023	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
March 27, 2023	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's law clerk to arrange a teleconference with the Court to resolve the disputed issues.
April 24, 2023	Close of Fact Discovery.
May 1, 2023	Opening Expert Reports.
May 30, 2023	Rebuttal Expert Reports.
June 20, 2023	Close of Expert Discovery.
June 26, 2023	Deadline for the second of two meet and confers to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. If it helps the parties determine these limits, the parties are encouraged to contact the Court's law clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
July 3, 2023	Dispositive motion deadline and <i>Daubert</i> motion deadline. See General Issues Note #7 regarding providing copies of the briefing to the Court and the technical advisor (if appointed).
July 17, 2023	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations). Serve responses to dispositive motions and <i>Daubert</i> motions

Deadline	Item
July 24, 2023	Serve replies to dispositive motions and <i>Daubert</i> motions
July 31, 2023	Serve objections to pretrial disclosures/rebuttal disclosures.
August 1, 2023	Parties to jointly email the Court's law clerk (<i>See</i> OGP at 1) to confirm their pretrial conference and trial dates.
Aug. 7, 2023	Serve objections to rebuttal disclosures; file Motions <i>in limine</i> .
Aug. 14, 2023	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i> .
Aug. 21, 2023	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and email the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
Aug. 25, 2023	Last court day for party asserting invalidity or non-infringement to give notice to adverse party of information set forth in 35 USC 282.
Sept. 1, 2023	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
Sept. 5, 2023	Final Pretrial Conference. Held in person unless otherwise requested.
Sept. 25, 2023 (Tentative)	Jury Selection/Trial.

CONCLUSION

The Parties respectfully request that the Court enter the above agreed proposed schedule.

DATED: May 2, 2022

Respectfully submitted,

/s/ Henry Pogorzelski

Henry M. Pogorzelski
Texas Bar No. 24007852
K&L GATES LLP
2801 Via Fortuna, Suite 650
Austin, Texas 78746
Telephone: (512) 482-6800
Fax: (512) 482-6859
Henry.pogorzelski@klgates.com

Nicholas F. Lenning (*admitted p.h.v.*)
Ruby A. Nagamine (*admitted p.h.v.*)
K&L GATES LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104
Telephone: (206) 370-6685
Fax: (206) 370-6006
nicholas.lenning@klgates.com

James A. Shimota (*admitted p.h.v.*)
Gina A. Johnson (*admitted p.h.v.*)
Benjamin E. Weed (*admitted p.h.v.*)
K&L GATES LLP
70 WEST Madison Street, Suite 3300
Chicago, Illinois 60602
Telephone: (312) 372-1121
Fax: (312) 827-8000
jim.shimota@klgates.com
gina.johnson@klgates.com
benjamin.weed@klgates.com

Counsel for Plaintiff
Midas Green Technologies, LLC

/s/ Benjamin A. Herbert (by permission)

Benjamin A. Herbert (*Admitted Pro Hac Vice*)
California State Bar No. 277356
KIRKLAND & ELLIS LLP
555 S. Flower St.
Los Angeles, CA 90071
Telephone: (213) 680-8400
Facsimile: (213) 680-8500
benjamin.herbert@kirkland.com

Gianni Cutri (*Admitted Pro Hac Vice*)
Illinois State Bar No. 6272109
KIRKLAND & ELLIS LLP
300 N. LaSalle
Chicago, IL 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
gianni.cutri@kirkland.com

Kat Li
State Bar No. 24070142
KIRKLAND & ELLIS LLP
401 Congress Avenue
Austin, TX 78701
Telephone: (512) 678-9100
Facsimile: (512) 678-9101
kat.li@kirkland.com

Attorneys for Defendants
Rhodium Enterprises, Inc., Rhodium Technologies LLC, Rhodium 10mw LLC, Rhodium 2.0 LLC, Rhodium 30mw LLC, Rhodium Encore LLC, Rhodium Industries LLC, Rhodium JV LLC, Rhodium Renewables LLC, Rhodium Shared Services LLC, Rhodium Shared Services PR Inc., Chase Blackmon, Cameron Blackmon, and Nathan Nichols

CERTIFICATE OF SERVICE

I hereby certify that counsel of record who have appeared electronically in this case are deemed to have consented to electronic service and are being served on May 2, 2022 with a copy of this document via the Court's CM/ECF system.

/s/ Henry Pogorzelski
Henry M. Pogorzelski